Criminal Law and Procedure

A Manual for Michigan Police Officers©

Summer 2007 Supplement to the 2006 Edition

INTRODUCTION

This supplement is intended to update the material contained in the 2006 edition of the Criminal Law and Procedure Manual. The material is current as of July 2007. **Michigan law changes constantly as a result of new legislation and court opinions.** Therefore, the manual should be used for guidance only, and officers should review issues with their local prosecutors for their interpretations.

INSTRUCTIONS FOR USE

This supplement is organized by chapters which correspond to the chapters in the Manual. Only chapters that contain supplemental material appear in this supplement.

The use of the heading "**Add To**" indicates that the user should consider the information as part of the existing material. The use of the heading "**Change**" indicates a substantial change in the law and the information in the Manual is superseded by the information in the supplement. The use of the heading "**Remove**" indicates that the material in the Manual is no longer valid and should be disregarded. Page numbers, where provided, indicate where the material should be considered added, changed, or removed from the Manual.

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CHAPTER FOUR: CRIMES AGAINST PERSONS

Accessory after the Fact – add to page 4-2

Proof of the underlying crime is enough to introduce defendant's statements indicating they were an accessory after the fact. *People v. King*, 271 Mich. App. 235 (2006)

FACTS: Two men committed a murder, larceny, and UDAA in Michigan. The defendant traveled with the killers to New Mexico in the victim's car, where she was arrested. She was interviewed by detectives from Michigan and admitted to knowing about the murder, traveling to New Mexico in the victim's car, and other incriminating statements. She was charged and convicted as an accessory after the fact.

At issue in the case was the *corpus delicti** rule, which forbids the use of a suspect's statement in court unless evidence independent of the crime is introduced first. The purpose of the rule is to prevent the use of a confession to a crime that didn't occur.

HELD: In cases where the defendant is charged as an accessory, evidence of the underlying crime is enough to satisfy the rule and admit the accessory's confession. In other words, evidence that the person actually was an accessory is not required for admission of the confession; all that is required is evidence that the crime they assisted with occurred.

**For more corpus delicti information, see also manual pages 4-1, 8-3, and 10-20*.

Aiding and abetting – add to page 4-2

Acting in one crime can give rise to criminal liability for another crime. *People v. Robinson*, 475 Mich. 1 (2006)

FACTS: Two defendants (Robinson and Pannell) agreed to commit an aggravated assault together. The victim had threatened Pannell's family, and this assault was intended as an act of revenge. Robinson began the assault by striking the victim in the face, knocking him to the ground. Pannell repeatedly kicked and punched the victim, and Robinson departed, telling Pannell "that's enough." After Robinson left, Pannell shot and killed the victim.

Robinson was convicted of second degree murder pursuant to MCL 767.39, Michigan's "aiding and abetting" statute. That statute does not constitute a separate offense; rather it imposes criminal liability for the crimes of the principal actor on those who aid and abet.

HELD: Robinson's conviction was upheld because "homicide might be expected to happen" during an aggravated assault given that Robinson knew Pannell was angry with the victim, assisted with (and initiated) the assault, and did nothing to protect the victim. The court held that not only can a defendant be held liable for *the* crime he helped commit, but he can also be liable for *any* crime that is the "natural and probable" result of the crime with which he assisted.

Search and rescue canine teams now receive the same protections as police canine teams – add to page 4-6

MCLs 750.50c & 750.81d adds search and rescue dogs and handlers to the list of protected teams. The affected statutes make it illegal to physically harm, harass, or interfere with the animals or their handlers.

Assaults upon corrections officers and attempts to escape are now five-year felonies; definition of "places of confinement" expanded – add to page 4-6

MCL 750.197c defines a "place of confinement" to include DOC facilities, local correctional facilities, and correctional facilities operated by a private vendor. Escapes, escape attempts, and assaults upon officers of those facilities are now five-year felonies (the punishment was previously unspecified).

Child Sexually Abusive Material (producing) – add to page 4-15

Downloading child pornography counts as "making" or "producing" under the statute. *People v. Hill*, 269 Mich. App. 505 (2006)

FACTS: During a lawful search of a residence, officers located 50 CD-Rs. A review of the CDs revealed at least 3000 pictures of children involved in different types of sexual activity. The defendant admitted to downloading the pictures off the Internet, but there was no indication that he took any of the pictures in question. He was charged with producing child sexually abusive materials and using a computer to commit a crime. He argued that he could not be charged with producing the material because all he did was download the pictures onto the CDs.

HELD- MCL 750.145c(2) prohibits a person who arranges for, produces, makes, or finances any child sexually abusive material. Sexually abusive material is defined as any reproduction, copy, or print of a photograph, picture or print….." When defendant downloaded the pictures from the Internet onto the CD-Rs, he was making or producing copies or reproductions of images depicting children in sexual acts, or in other words, he was making child sexually abusive material as contemplated by MCL 750.145e. The court held that the term "make" includes what the defendant did in the case. The CD-Rs were his own creations that he made and thus he produced the material.

Criminal Sexual Conduct (CSC) and Child Sexually Abusive Material – add to page 4-19. *People v. Girard*, 269 Mich. App. 15 (2005)

FACTS: The defendant sexually assaulted his stepdaughter while watching child pornography. He was charged with CSC 1st and possession of child sexually abusive materials. He argued that he could not be charged with both at the same time due to unfair prejudice, but the court disagreed. The defendant also questioned whether the prosecutor had established that he "knowingly possessed" child pornography. The prosecution does have to prove more than just the presence of child pornography in an Internet temporary file or recycle bin to establish "knowing possession." Finally, he argued that there was insufficient evidence presented that the pictures were of real children under the age of eighteen for child pornography charges.

HELD: The evidence of the child pornography tended to show that the defendant used pornography for stimulation before and during his sexual abuse which helped to show his *modus operandi* and to establish the charge of CSC. In this case it was proven that the defendant possessed sexually abusive material because a friend of his testified that the he had sent him pictures of nude children and because of the large number of images stored on the defendant's hard drive.

The prosecutor had to prove that the defendant "knew or should have known" the pictures were of those of children under eighteen. Expert testimony may be used to establish the age but is not required if other evidence exists for the jury. In this case the court held that the pictures themselves were sufficient to establish the age and reality of the children.

Criminal Sexual Conduct (CSC) – add to page 4-19

A child may not consent; child sexually abusive material, and eavesdropping.
People v. Wilkens, 267 Mich. App. 728 (2005)

FACTS: Officers were investigating an assault complaint and went to defendant's house as part of the investigation. The officers asked for consent to search his house for a gun or knife. He signed a consent form that allowed them to search his rooms but not the rooms of his tenants. The officers began their search and noticed in his shower that he shared with the tenants a homemade device with electrical switches and a motion detector. The officer thought this was strange especially since other tenants used the shower. The officer also observed a small hole and upon closer observation with a flashlight he saw the lens of a camera. The officers then arrested the defendant for eavesdropping and stopped their search until after securing a search warrant. After obtaining the search warrant, officers retrieved the camera and found wiring that went to the defendant's bedroom and living room. The officer also seized a number of video tapes and on one of them they observed the defendant performing a sexual act on a sixteen year old girl and also observed a fourteen year old boy having sexual relationships with the female.

The defendant was charged with eavesdropping, CSC 1st and producing sexually explicit material.

HELD: Defendant first argued that the search was illegal in that the consent search was for a knife or gun, and the officers exceeded the search by shining their flashlight in the hole in the shower. The court held that the officers were legally in the shower under the consent exception and that the devices observed were in plain view. The incriminating nature of the device was readily apparent even though the full nature of the device was not known until after the search warrant was obtained. The search was held to be valid.

Defendant also argued that the CSC charges were inappropriate. The prosecutor argued that penetration occurred during the commission of another felony, which was producing sexually abusive material. Defendant argued that the minor consented to being videotaped and thus the child sexually abusive material charge should be thrown out. The court disagreed. A child is defined under the child sexually abusive material statute as less then 18. Therefore, the child could not consent.

Defendant also argued that there was insufficient evidence that penetration occurred between him and the sixteen year old girl. Penetration is defined as "any intrusion how ever slight." In the video the defendant places his mouth between the victim's legs and the male victim testified that he observed defendant touch the female's vagina with a sex toy. The evidence was sufficient to show penetration.

Defendant was also charged with aiding and abetting CSC by allowing the fourteen year old and sixteen year old to have sexual penetration while he videotaped them. The video was sufficient evidence to show that he counseled, aided or abetted the commission of the penetration between the minors.

Criminal Sexual Conduct (CSC), mentally incapable victim – add to page 4-18

People v. Cox, 268 Mich. App. 440 (2005)

FACTS: The defendant had sexual relations with the victim whom the prosecutor had argued was mentally incapable. The defendant argued that the victim attended school, was able to perform automotive repairs, could hold conversations with others and could choose a sexual partner. The FIA worker testified that the victim was not capable of living on his own, was easily manipulated, easily persuaded, and had the mentally of a 12 year old. A psychologist testified that the victim could not appreciate the moral and social significance of his acts.

HELD – Regardless of the victim's awareness of the events as they occurred, there was enough evidence presented that he did not understand the nonphysical aspects of the sex acts and was mentally incapable of consenting to the sexual relationship with the defendant. There was also sufficient evidence presented that the defendant knew, or should have known, that the victim was mentally incapable. He had visited

him five to ten times and had let the victim stay at his house when the victim ran away from his foster home.

Criminal Sexual Conduct (CSC) – add to page 4-19

Person under the age of 16 cannot consent to CSC. *People v. Starks*, 473 Mich. 227 (2005)

FACTS: The victim was a thirteen old resident of a juvenile facility. One night, in a secluded area, a female employee of the facility offered to perform fellatio on the victim. The victim unzipped his pants but another employee stopped the act before it could be performed. The defendant was charged with assault with intent to commit CSC but argued that the victim consented to the act.

HELD: The victim could not consent to the act because of his age. A person under the age of sixteen cannot legally consent to CSC.

Delivery of schedule 1 or 2 controlled substance resulting in death – See *Weapons and Contraband*.

Prohibited tampering with any electronic communication – MCL 750.540 – add to page 4-33 and remove old statute.

The amended phone tampering statute makes it a felony to interfere with electronic communication mediums including phones and computers. It includes "willfully and maliciously" interrupting service or message delivery, and reading or copying messages from an electronic medium accessed without authorization.

(1) A person shall not willfully and maliciously cut, break, disconnect, interrupt, tap, or make any unauthorized connection with any electronic medium of communication, including the Internet or a computer, computer program, computer system, or computer network, or a telephone.

(2) A person shall not willfully and maliciously read or copy any message from any telegraph, telephone line, wire, cable, computer network, computer program, or computer system, or telephone or other electronic medium of communication that the person accessed without authorization.

(3) A person shall not willfully and maliciously make unauthorized use of any electronic medium of communication, including the Internet or a computer, computer program, computer system, or computer network, or telephone.

(4) A person shall not willfully and maliciously prevent, obstruct, or delay by any means the sending, conveyance, or delivery of any authorized communication, by or through any telegraph or telephone line, cable, wire, or any electronic medium of communication, including the Internet or a computer, computer program, computer system, or computer network.

(5) A person who violates this section is guilty of a crime as follows:

(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $1,000.00, or both.

(b) If the incident to be reported results in injury to or the death of any person, the person violating this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

First degree murder / Felony murder – MCL 750.316 – add to page 4-23

Charges now include murder during the commission of aggravated stalking and torture.

Torture (MCL 750.85) and aggravated stalking (MCL 750. 411i) have been added to a list of offenses in the felony murder statute, MCL 750.316(b), that automatically cause a murder to be punishable by life if the murder occurs during the preparation or attempt to commit the crime.

Harboring a Fugitive – MCL 750.199 - add to page 7-13 and remove old statute

Statute amended to include persons for whom there are arrest warrants.

MCL 750.199 was amended to make it a crime to knowingly or willfully conceal or harbor, for the purpose of concealment from a peace officer, a person wanted on warrants as follows:

Misdemeanor Harboring (93 days) –

1. Arrest warrant for a misdemeanor
2. Bench warrant in a civil case (except civil infractions)
3. Bench warrant in a criminal case where the crime charged is a misdemeanor

Felony Harboring (4 years) –

1. Arrest warrant for a felony
2. Bench warrant in a criminal case where the crime charged is a felony

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Human trafficking – MCL 750.462a - 750.462i – add to page 4-26 after parental kidnapping

Human trafficking statute created.

The new statutes prohibit a person from knowingly subjecting or attempting to subject another person to forced labor or services by:

1. Causing or threatening physical harm to another person (750.462b).
2. Physically restraining or threatening to physically restrain another person (750.462c).
3. Abusing or threatening to abuse the law or legal process (750.462d).
4. Destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other government identification (750.462e).
5. Using blackmail, threatening or causing financial harm, or exerting or threatening to exert financial control (750.462f).

It is also now illegal to facilitate human trafficking, to benefit financially, or to receive anything of value from a venture engaged in human trafficking (750.462h). Under those sections, human trafficking is punishable by a term of 10 years except if a person is inured (15 years) or killed (life).

When the trafficking involves obtaining a minor for the purposes of child sexually abusive activity, it is punishable by a term of 20 years (750.462g).

Kidnapping and Unlawful Imprisonment – MCL 750.349 and 750.349b – add to page 4-25

Kidnapping statute amended, Unlawful Imprisonment statute created.

Kidnapping

The crime of kidnapping will continue to be codified in MCL 750.349 and is punishable by imprisonment for life or any term of years. Under the amended statute, a person has committed kidnapping when he or she knowingly restrains another with the intent to do one or more of the following:

1. Hold that person for ransom or reward.
2. Use the person as a hostage or shield.
3. Engage in criminal sexual conduct.
4. Take the person outside of Michigan.
5. Hold the person in involuntary servitude.

In this section, restrain means to "restrict the person's movements or to confine the person so as to interfere with that person's liberty…without legal authority." The definition of 'restrain' contained in this section does *not* require the use of force and it explicitly excludes a length of time requirement.

Unlawful Imprisonment

The crime of unlawful imprisonment is codified in the newly created MCL 750.349b and is punishable by a term of 15 years. Under the new statute, a person commits unlawful imprisonment when he or she knowingly restrains another person under any of the following circumstances:

1. The restraint is by means of a weapon or dangerous instrument.
2. The person was secretly confined.
3. The restraint was used to facilitate the commission of, or flight from, another felony.

In this section, 'restrain' is defined the same as in the kidnapping section except that *force must be used* to accomplish the restraint.
'Secretly confined' is defined as:

1. To keep the confinement secret or
2. To keep the location of the person secret.

Methamphetamine Production – add to pages 4-11, 6-3.

***Child exposure or contact, reporting requirements*.** See *Weapons and Contraband*.

Distributing sexually explicit material to minors – MCL 722.676 – add to page 4-12

Exception created for parent or guardian in appropriate setting.

Section 5 does not apply to the dissemination of sexually explicit matter to:(a) A parent or guardian who disseminates sexually explicit matter to his or her child or ward **unless the dissemination is for the sexual gratification of the parent or guardian.**

Sex Offenders, monitoring – MCL 750.520n – add to page 4-21

Lifetime electronic monitoring of adults convicted of CSC with victim under 13.

MCL 750.520n requires the lifetime electronic monitoring of persons over 17 who are convicted of committing CSC when the victim is under 13. The new section also makes it a felony to damage, remove, or alter the monitoring device.

Sex Offenders, notification – MCL 28.730 – add to page 4-22

Public email notification of sex offender address changes.

The MSP will provide a ListServ that will notify subscribers of changes to the sex offender registry within a specified zip code.

Sex Offenders, notification – MCL 28.725 and 791.236 – add to page 4-22

Sex Offender Registry notification process changed for parolees.

Convicted sex offenders are required to report their address to the Department of Corrections before being discharged or released on parole. The changes further require that the DOC report the address to law enforcement in the area in which the parolee will reside. Under the former law, parolees were responsible for registering themselves within 10 days of release, which gave them the opportunity to evade registration.

Refusal to provide an address before parole is a felony, and might be grounds for DOC to deny or revoke parole.

School Safety Zones – MCL 28.733 – add to page 4-21

New law prohibits certain sex offenders from loitering or residing within 1000 feet of school property.

Definitions

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295,MCL 28.722.

(b) "Loiter" means to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors.

(c) "Minor" means an individual less than 18 years of age.

(d) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

(e) "School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:

(*i*) It is used to impart educational instruction.

(*ii*) It is for use by students not more than 19 years of age for sports or other recreational activities.

(f) "Student safety zone" means the area that lies **1,000 feet or less** from school property.

Work or Loiter - MCL 28.734

An individual required to be registered shall not **Work** or **Loiter** within a student safety zone.

1st violation - 1 year misdemeanor

2nd or subsequent violation – 2-year felony

Does not apply to any of the following, however, subject may not initiate or maintain contact with a minor within that student safety zone.

⇒ An individual who was working within a student safety zone at the time the amendatory act that added this section was enacted into law.

⇒ An individual whose place of employment is within a student safety zone solely because a school is relocated or is initially established 1,000 feet or less from the individual's place of employment.

⇒ An individual who only intermittently or sporadically enters a student safety zone for the purpose of work.

This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

Residing - MCL 28.735

An individual required to be registered shall not reside within a student safety zone.

1st violation - 1 year misdemeanor

2nd or subsequent violation – 2-year felony

Does not apply to any of the following, however, subject may not initiate or maintain contact with a minor within that student safety zone.

⇒ An individual who is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, the individual may initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.

⇒ The individual is not more than 26 years of age and attends a special education program, and resides with his or her parent or guardian or resides in a group home or assisted living facility. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.

⇒ An individual who was residing within that student safety zone at the time the amendatory act that added this section was enacted into law.

⇒ An individual who is a patient in a hospital or hospice that is located within a student safety zone.

⇒ An individual who resides within a student safety zone because the individual is an inmate or resident of a prison, jail, juvenile facility, or other correctional facility or is a patient of a mental health facility under an order of commitment.

Subject required to registered after 1/1/2006

An individual who resides within a student safety zone and who is subsequently required to register shall change his or her residence to a location outside the student safety zone not more than 90 days after he or she is sentenced for the conviction that gives rise to the obligation to register under article

II. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone during the 90-day period described in this subsection.

This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

Above sections 34 and 35 do not apply to any of the following – MCL 28.736:

(a) An individual who is convicted as a juvenile under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, of committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, if either of the following applies:

(*i*) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.

(*ii*) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.

(b) An individual who was charged under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL750.520b, 750.520c, and 750.520d, with committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate section520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if either of the following applies:

(*i*) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.

(*ii*) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.

(c) An individual who has successfully completed his or her probationary period under sections 11 to 15 of chapter II for committing a listed offense and has been discharged from youthful trainee status.

(d) An individual convicted of committing or attempting to commit a violation solely described in section 520e (1) (a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, who at the time of the violation was 17 years of age or older but less than 21 years of age and who is not more than 5 years older than the victim.

(2) An individual who is convicted of more than 1 offense described in subsection (1) is ineligible for exemption under this section.

Sex Offenders, change of address – MCL 28.725 – add to page 4-21

Change of domicile or residence, notice requirements.

(1) Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located or the department post of the individual's new residence or domicile:

(a) The individual **changes or vacates** his or her residence, domicile, or place of work or education, including any change required to be reported under section 4a.

(b) The individual is paroled.

(c) Final release of the individual from the jurisdiction of the department of corrections.

New penalties for verification violations

If the individual has no prior convictions for a violation of this act, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

If the individual has 1 prior conviction for a violation of this act, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

If the individual has 2 or more prior convictions for a violation of this act, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

Torture – MCL 750.85 – add to page 4-8

New law creates felony penalty for torture.

(1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

(2) As used in this section:

(a) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.

(c) "Great bodily injury" means either of the following:

(i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

(d) "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following:

(i) The intentional infliction or threatened infliction of great bodily injury.

(ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.

(iii) The threat of imminent death.

(iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality.

(3) Proof that a victim suffered pain is not an element of the crime under this section.

(4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

Unlawful Imprisonment – See *Kidnapping*, this chapter.

Use of Computer to Solicit a Minor – add to page 4-37

Statute determined to be constitutional. *People v. Cervi,* 270 Mich. App. 603 (2006)

FACTS: An undercover officer posed as a 14 year-old girl and communicated with the defendant (an adult male) via e-mail and instant messaging. The communications included solicitations to engage in sexual activity (CSC III). The defendant arranged to meet the "14 year-old" and was arrested after arriving at the agreed upon location.

HELD: The court found no constitutional violation because the statute doesn't criminalize words alone, rather it criminalizes communications with a minor (or perceived minor) with the specific intent to make the minor the victim of a crime listed in the statute.

The defendant was charged with two counts of violating MCL 750.145d because he communicated with the "14 year-old" on two separate occasions. Even though the content of those communications were essentially the same, the court held that they were not part of one continuing act, but were two separate acts that could be charged as such.

The defendant was also charged with communicating with a minor for the purposes of attempting to produce child sexually abusive material in violation of MCL 750.145c. During his online communications with the "14 year-old," the defendant asked for permission to videotape their forthcoming sexual encounter. The court held that the defendant's request was enough to at least bind the case over for trial in circuit court.

CHAPTER FIVE: CRIMES AGAINST PROPERTY

Embezzlement – MCL 750.174 – add to page 5-14

The amended statute increases the penalties for embezzlement when the victim is a charity recognized under the Internal Revenue Code and adds additional tiers for all embezzlements. Under the amended statute, the following penalties apply to embezzlement from a charity:

Amount Embezzled	Penalty
Less than $200	1 year misdemeanor
$200 to $1,000	5 year felony
$1,000 to $20,000	10 year felony

Additional tiers for *all* embezzlements are as follows:

Amount Embezzled	Penalty
$20,000 to $50,000	10 year felony
$50,000 to $100,000	15 year felony
More than $100,000	20 year felony

Trespassing on Key Facilities – MCL 750.552c – add to page 5-25

New statute creates felony penalty for trespass on listed facilities.

(1) A person shall not intentionally and without authority or permission enter or remain in or upon premises or a structure belonging to another person that is a key facility if the key facility is completely enclosed by a physical barrier of any kind, including, but not limited to, a significant water barrier that prevents pedestrian access, and is posted with signage as prescribed under subsection (2). As used in this subsection, "key facility" means 1 or more of the following:

(a) A chemical manufacturing facility.

(b) A refinery.

(c) An electric utility facility, including, but not limited to, a power plant, a power generation facility peaker, an electric transmission facility, an electric station or substation, or any other facility used to support the generation, transmission, or distribution of electricity. Electric utility facility does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

(d) A water intake structure or water treatment facility.

(e) A natural gas utility facility, including, but not limited to, an age station, compressor station, odorization facility, main line valve, natural gas storage facility, or any other facility used to support the acquisition, transmission, distribution, or storage of natural gas. Natural gas utility facility does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.

(f) Gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.

(g) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal.

(h) A pulp or paper manufacturing facility.

(i) A pharmaceutical manufacturing facility.

(j) A hazardous waste storage, treatment, or disposal facility.

(k) A telecommunication facility, including, but not limited to, a central office or cellular telephone tower site.

(l) A facility substantially similar to a facility, structure, or station listed in subdivisions (a) to (k) or a resource required to submit a risk management plan under 42 USC 7412(r).

(2) A key facility shall be posted in a conspicuous manner against entry. The minimum letter height on the posting signs shall be 1 inch. Each posting sign shall be not less than 50 square inches, and the signs shall be spaced to enable a person to observe not less than 1 sign at any point of entry upon the property.

(3) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

(4) This section does not prohibit and shall be not construed to prevent lawful assembly or a peaceful and orderly petition for the redress of grievances, including, but not limited to, a labor dispute between an employer and its employees.

CHAPTER SIX: WEAPONS AND CONTRABAND

Alcohol Vapor Device – MCL 436.1105 – add to page 6-33

Law defines "alcohol vapor devices" and creates penalty.

(2) "Alcohol vapor device" means any device that provides for the use of air or oxygen bubbled through alcoholic liquor to produce a vapor or mist that allows the user to inhale this alcoholic vapor through the mouth or nose.

(3) "Alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this chapter.

MCL 436.1914 – Penalty for possession or use of alcohol vapor device

(1) Except as otherwise provided in subsection (3), a person shall not use or offer for use, possess, sell, or offer for sale an alcohol vapor device.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable in the manner provided for in section 909.

(3) The commission may jointly promulgate rules with the department of community health to allow for the sale or use of an alcohol vapor device for research purposes.

Badges, Patches or Uniforms – MCL 750.217g and 750.217h add to page 6-14

It is a 93-day misdemeanor to misuse badges, patches, and uniforms of fire departments and emergency medical services.

MCL 750.217g, makes it illegal to sell, furnish, possess, wear, or display a badge, patch, or uniform of a fire department, life support agency, or medical first response service, unless:

1. The person is authorized by the head of the agency, or
2. The person is a member of the agency, or
3. The person is a retired member of the agency using a retirement badge, or
4. The person is the spouse, child, or next of kin of a deceased member, or
5. The person is a collector and the item is transported in a container or display case.

MCL 750.217h, prohibits impersonating a firefighter or first responder. The section makes it illegal to wear or display the emblem, insignia, logo, service mark, or other identification of a fire department, life support agency, or medical first response service if:

1. The person represents themselves as a member of the agency, or
2. The wearing or display would lead a reasonable person to believe the person is a member and the item is worn to promote a commercial service or charitable endeavor.

Section 217h also includes replicas and imitations of the items listed in the statute.

Breath Tests, juveniles – MCL 436.1703 – add to page 6-33

Courts may order breath tests of juveniles as part of sentencing or at the request of parents.

The “minor in possession” section of the Liquor Control Code has been amended to allow a court to order regular or random breath tests of minors convicted under that section. Such orders may be issued as part of sentencing or at the request of the minor’s parents. Although this amendment has little effect on law enforcement procedure, officers should be aware that they may be asked to perform such tests pursuant to an order issued under this section.

Computer Assisted Hunting – MCL 750.236a – add to page 6-25

Law prevents the use of a computer to remotely discharge firearms for hunting.

(1) A person in this state shall not do any of the following:

(a) Engage in computer-assisted shooting.

(b) Provide or operate, with or without remuneration, facilities for computer-assisted shooting.

(c) Provide or offer to provide, with or without remuneration, equipment specially adapted for computer-assisted shooting. This subdivision does not prohibit providing or offering to provide any of the following:

(*i*) General-purpose equipment, including a computer, a camera, fencing, building materials, or a firearm.

(*ii*) General-purpose computer software, including an operating system and communications programs.

(*iii*) General telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with Internet access.

(d) Provide or offer to provide, with or without remuneration, an animal for computer-assisted shooting.

(2) As used in this section:

(a) "Computer-assisted shooting" means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm to kill an animal, whether or not the animal is located in this state.

(b) "Facilities for computer-assisted remote shooting" includes real property and improvements on the property associated with computer-assisted shooting, such as hunting blinds, offices, and rooms equipped to facilitate computer-assisted shooting.

⇒ 93-day misdemeanor.

⇒ Subsequent violation = 1 year misdemeanor

Concealed Pistol Licenses – MCL 28.432 – add to page 6-20

CPL holders may possess a pistol registered to another person.

(1) Sections 2 and 9 do not apply to any of the following:

(i) An individual carrying, possessing, using, or transporting a pistol belonging to another individual, if the other individual's pistol is properly licensed and inspected under this act and the individual carrying, possessing, using, or transporting the pistol has obtained a license under section 5b to carry a concealed pistol.

Concealed Pistol Licenses, expiration – MCL 28.425 – add to page 6-19

Expired CPLs may be valid when coupled with receipt from county clerk.

When a CPL holder applies for a license renewal, the county clerk must provide a receipt for the application. The licensing board must renew or deny the renewal application within 60 days.

If the board fails to renew or deny the application, the expiration of the CPL is automatically extended until the board issues a new license, or 180 days, whichever comes first.

In order for the extension to be valid, the CPL holder must carry both the expired license and the receipt, and present both to police officers when stopped.

Concealed Pistol Licenses, expiration – MCL 28.426*l* - add to page 6-19

Concealed Pistol Licenses to expire on holder's date of birth.

Under the amended statute, newly issued or renewed CPLs will expire on the date of birth of the applicant, rather than the date of issue as previously required.

Concealed Pistol Licenses, mental health of applicant – add to page 6-19

Heindlmeyer v. Ottawa County Licensing Bd., 268 Mich. App. 202 (2005)

FACTS: The petitioner in this case was a reserve police officer seeking a CPL. The gun board denied the CPL under the safety concern that the petitioner had a previous mental illness. The board based the decision on voluntary and involuntary hospitalizations that had previously occurred for psychological examinations. At the time of the application, the petitioner presented two favorable reports from doctors. The petitioner appealed the decision to the circuit court which overturned the board's decision and required that a permit be issued. The prosecutor appealed to the Court of Appeals.

HELD – The permit should be issued. There were no mental heath problems since the early 1990s. Since that time, the petitioner had graduated from college, married and now had three children. His wife, a nurse, had no concerns with him having a CPL and most recent evaluations were favorable. The petitioner owns firearms and there were no facts presented by the gun board indicating he was irresponsible with the firearm. Using the clear and convincing standard, there was nothing presented that allowed the board to deny the subject a permit and it should have been issued.

Concealed Pistol Licenses, mental health of applicant – add to page 6-19

AG Opinion No. 7189 (March 16, 2006)

The Concealed Pistol Licensing Act does not confer on a county concealed weapon licensing board the power to make its own medical diagnosis of mental illness in the course of determining an applicant's eligibility for licensure under the act. However, a county concealed weapon licensing board has the authority to review records and other evidence in the course of fulfilling its responsibility to determine whether an applicant for a concealed pistol license has been diagnosed with a mental illness at the time the application is made.

Carrying a Concealed Weapon; momentary possession – add to page 6-17

Even "momentary possession" satisfies the statute. *People v. Hernandez-Garcia*, 266 Mich. App. 416 (2005) ******

HELD: Without reciting the facts of the case, the Court overturned previous case law that allowed a defense for CCW where the defendant only had "momentary possession" of a pistol. This defense was based on policy and not statute. For this reason, the defense was not valid and could not be used. "Momentary possession" of a pistol after disarming another is not a valid defense to CCW.

The case continued by defining CCW. "Concealment for CCW occurs when the pistol is not discernable by the ordinary observation of persons casually observing the person carrying it. Absolute invisibility of the weapon is not indispensable to concealment; the weapon need not be totally concealed."

**** Note: The Michigan Supreme Court has granted leave to appeal in this case. As of the date of publication, the MSC's opinion had not been released.***

Carrying a Concealed Weapon, retired police officers – add to page 6-17

AG Opinion No. 7182 (October 19, 2005)

The terms "retired police officer" or "retired law enforcement officer," as used in the Concealed Pistol Licensing Act, MCL 28.421 et seq, mean a certified police or law enforcement officer who retired in good standing from his or her employment as a police or law enforcement officer and who is receiving a retirement benefit.

Delivery of a Controlled Substance / Murder – MCL 750.317a – add to page 6-3

New statute penalizes delivery of controlled substance causing death.

A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person in violation of section 7401 of the public health code, 1978 PA 368, MCL 333.7401, that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years.

Ephedrine, Pseudoephedrine; sale – MCL 333.7340 – add to page 6-7

New statute prohibits the sale of ephedrine and pseudoephedrine through the mail or electronically.

The new section makes it a felony to furnish ephedrine or pseudoephedrine through the mail, Internet, telephone, or other electronic means. Exceptions include: Pediatric products, products that cannot be converted to methamphetamine and transactions connected to businesses as authorized by law.

Libraries added to drug free zones - MCLs 333.7410 & 777.18 – add to page 6-9

Drug free school zone statute include libraries. It is now unlawful to possess a controlled substance within 1,000 feet of a library. Libraries covered by the new statute include state, local, and school libraries. It also includes privately-owned libraries open to the public.

Firearms, operability – add to pages 6-24, 6-26

A firearm does not have to be operable in order to support a conviction for *felon in possession of a firearm* or *possession of a firearm during the commission of a felony* (felony firearm). *People v. Peals*, 476 Mich. 636 (2006)

FACTS: The defendant found a gun in two pieces and placed it in his pocket, believing that the gun was inoperable. At trial, a police officer testified that the gun would not function.

HELD: The definition of firearm contained in MCL 750.222 does not require that "the weapon be operable or reasonably or readily repairable" (internal quotations omitted). Instead, the Court held that the definition of firearm focuses on what the weapon was *designed* to do, rather than whether it can actually do it.

Law Enforcement Logos – MCL 750.216b – add to page 6-13

***False representation for purposes of promotion or endorsement is prohibited*.**

(1) A person, other than a peace officer, shall not wear or display the emblem, insignia, logo, service mark, or other law enforcement identification of any law enforcement agency, or a facsimile of any of those items, if either of the following applies:

(a) The person represents himself or herself to another person as being a peace officer. As used in this subdivision, "peace officer" means that term as defined in section 215.

(b) The wearing or display occurs in a manner that would lead a reasonable person to falsely believe that the law enforcement agency whose emblem, insignia, logo, service mark, or other law enforcement identification or facsimile is being worn or displayed is promoting or endorsing a commercial service or product or a charitable endeavor.

(2) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both. A charge under or a conviction or punishment for a violation of this section does not prevent a person from being charged with, convicted of, or punished for any other violation of law arising from the same transaction.

(3) As used in this section, "law enforcement identification" means any identification that contains the words "law enforcement" or similar words, including, but not limited to, "agent", "enforcement agent", "detective", "task force", "fugitive recovery agent", or any other combination of names that gives the impression that the bearer is in any way connected with the federal government, state government, or any political subdivision of a state government. However, law enforcement identification does not include "bail agent" or "bondsman" when used by a bail agent or bondsman operating in accordance with section 167b

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Methamphetamine, reporting activity – MCL 28.191-28.196 – add to page 6-3

***New law requires reporting of activity related to methamphetamine*.**

Law enforcement and other agencies are required to report information regarding the manufacture, use, possession, and distribution of methamphetamine in Michigan. Such report must be made to the MSP and must include all of the following:

1. The name and address of the reporting agency
2. Whether the incident involved manufacture, use, possession, or distribution
3. The location of the incident, and
4. Whether a person under 18 years old was present

The Act requires the MSP to designate the method of reporting. EPIC Form 143 has been selected as the reporting method, and that form can be found at www.michigan.gov/meth-response.

Methamphetamine, reporting – MCL 722.623, 722.628, and 722.637 – add to page 6-3

Police are now required to include incidents involving methamphetamine when reporting child abuse or neglect – add to pages 4-11, 6-3.

The child abuse reporting requirements have been amended (DHS-3200) by adding child exposure or contact with methamphetamine production to the list of events triggering the reporting requirements. Under the amended statutes, child exposure or contact with methamphetamine production alone requires reporting; no other abuse or neglect is required.

Procedures for reporting child abuse and neglect cases have not otherwise changed except that if the person exposing the child is a childcare provider, law enforcement must report the exposure to the regulatory agency with authority over the child care provider's organization.

Meth lab sites listed on the Internet – add to page 6-3

As part of the above mentioned Methamphetamine-related laws, MCL Public Act 255 of 2006 requires that information concerning meth labs reported by law enforcement be made available through the Department of Community Health web site.

The MDCH's Methamphetamine Resource Site now contains that information.

Methamphetamines, sale of ephedrine / pseudoephedrine – MCL 333.17766f – add to page 6-3

New methamphetamine laws address precursor material.

Selling ephedrine or pseudoephedrine

(1) A person who possesses products that contain any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine for retail sale pursuant to a license shall not knowingly do any of the following:

(a) Sell any product described under this subsection to an individual under 18 years of age.

(b) Sell in a single over-the-counter sale more than 2 packages, or 48 tablets or capsules, of any product described under this subsection to any individual.

(c) Sell in a single over-the-counter sale more than 2 personal convenience packages containing 2 tablets or capsules each of any product described under this subsection to any individual.

(2) This section does not apply to the following:

(a) A pediatric product primarily intended for administration to children under 12 years of age according to label instructions.

(b) A product containing pseudoephedrine that is in a liquid form if pseudoephedrine is not the only active ingredient.

(c) A product that the state board of pharmacy, upon application of a manufacturer or certification by the United States drug enforcement administration as inconvertible, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

(d) A product that is dispensed pursuant to a prescription.

⇒ State civil infraction = $50.00 for each violation.

It is an affirmative defense to a citation issued pursuant to subsection (1)(a) that the defendant had in force at the time of the citation and continues to have in force a written policy for employees to prevent the sale of products that contain any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file and serve notice of the defense, in writing, upon the court and the prosecuting attorney. The notice shall be served not less than 14 days before the hearing date.

(8) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (7) shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall be served not less than 7 days before the hearing date and shall contain the name and address of each rebuttal witness.

(9) Notwithstanding any other provision of law, beginning December 15, 2005, a city, township, village, county, other local unit of government, or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale of a product described under subsection (1) that is contrary to, or in any way conflicting with, this section. This subsection does not invalidate or otherwise restrict a requirement or prohibition described in this subsection existing on December 15, 2005.

(10) Subsections (1) through (5) and (7) through (9) take effect December 15, 2005.

Methamphetamine, sale of ephedrine and pseudoephedrine – MCL 333.17766e – add to page 6-3

Sale of ephedrine or pseudoephedrine.

(1) Except as otherwise provided under this section, a person who possesses ephedrine or pseudoephedrine for retail sale pursuant to a license issued under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, shall maintain all products that contain any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine in accordance with 1 of the following:

⇒ Behind a counter where the public is not permitted.

⇒ Within a locked case so that a customer wanting access to the product must ask a store employee for assistance.

⇒ Within 20 feet of a counter that allows the attendant to view the products in an unobstructed manner or utilize an antitheft device on those products that uses special package tags and detection alarms designed to prevent theft along with constant video surveillance as follows:

- The video camera is positioned so that individuals examining or removing those products are visible.
- The video camera is programmed to record, at a minimum, a 1-second image every 5 seconds.
- The video images must be maintained for a minimum of 6 months and made available to any law enforcement agency upon request.
- The retailer shall prominently display a sign indicating that the area is under constant video surveillance in a conspicuous location, clearly visible to the public.

(2) If the products described under subsection (1) are maintained within 20 feet of a counter and that counter is not staffed by 1 or more employees at all times, then the retail distributor shall utilize antitheft devices and video surveillance as provided under subsection (1)(c) when the counter is not staffed. If all of the products described under subsection (1) are maintained behind the counter or within a locked case, then the retailer is not required to maintain a log or any other type of record detailing the sale of those products.

(3) A person who sells a product described in subsection (1) shall do each of the following:

(a) Require the purchaser of a product described under subsection (1) to produce a valid photo identification that includes the individual's name and date of birth.

(b) Except as otherwise provided under subsection (2), maintain a log or some type of record detailing the sale of a product described under subsection (1), including the date of the sale, the name and date of birth of the buyer, and the amount and description of the product sold. The log or other means of recording the sale as required under this subdivision shall be maintained for a minimum of 6 months and made available to only a law enforcement agency upon request. The log or other means of recording the sale is not a public record and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. A person shall not sell or provide a copy of the log or other means of recording the sale to another for the purpose of surveys, marketing, or solicitations.

(4) This section does not apply to the following:

(a) A pediatric product primarily intended for administration to children under 12 years of age according to label instructions.

(b) A product containing pseudoephedrine that is in a liquid form if pseudoephedrine is not the only active ingredient.

(c) A product that the state board of pharmacy, upon application of a manufacturer or certification by the United States drug enforcement administration as inconvertible, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

(d) A product that is dispensed pursuant to a prescription.

⇒ A **state civil infraction** = $50.00 for each violation.

Paraphernalia, drug – add to page 6-6

Items that may be used for smoking tobacco are not "drug paraphernalia" for sale purposes.
Gauthier v. Alpena Co. Prosecutor, 267 Mich. App. 167 (2005)

FACTS: The county prosecutor sent a local business notice that it would be prosecuted if they continued selling drug paraphernalia. The paraphernalia mentioned in the notice included: pipes, dug-outs, one-hitters, bongs, bowls, cocaine kits, bullets, snorters and small spoons. The business sought a declaratory judgment as to the legality of the items.

HELD: MCL 333.7457(d) specifically excludes from the definition of paraphernalia any item that may be used for the smoking of tobacco or herbs. Because anything designed for the smoking of marijuana, such as a dug-out pipe or a bong, may also be used to smoke tobacco, such items are not prohibited paraphernalia. Items that could not be used to smoke tobacco, such as bullets and snorters, were illegal paraphernalia.

Police Scanners – MCL 750.508 – add to page 6-34 and remove old statute

Permit no longer needed for Police scanners in motor vehicles.

Citizens will no longer be required to obtain a permit from the State Police in order to equip a motor vehicle with a scanner. Instead, it will be a crime if a scanner (regardless of its location) is used in the commission of a crime with a penalty of 93 days or more.

A person who has been convicted of a felony within the past 5 years is prohibited from possessing a scanner at any time.

Self-Defense Sprays – MCLs 750.224, 750.224d, and 750.231 – add to page 6-16

Self-defense spray statutes amended to address foams and 10% oleoresin capsicum (OC) concentrations for police.

The statutes regarding self-defense sprays have been amended to reflect the following changes:

- Self-defense sprays now include foam emitting devices (not previously allowed)
- The maximum OC content increases from 2% to 10%
- The maximum OC content for sprays and foams possessed by the public remains at 2%
- Non-sworn police employees may use a 10% solution if:
  - The use is reasonable
  - The person has written authorization from their employer
  - The person has been trained in the use, effects, and risks of using the device

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Tobacco – MCL 205.422 and 205.428 – add anywhere to Chapter 6

Counterfeit and "gray market" cigarettes.

The act creates new felonies for possession of counterfeit cigarette papers, gray market cigarettes, and gray market cigarette papers are now violations of the tobacco tax act.

Note: Gray market products are typically marked with fine-print that indicates the product is intended for sale outside of the United States.

CHAPTER SEVEN: PUBLIC ORDER CRIMES

Disorderly Conduct at Funerals – MCL 750.176d – add to page 7-10

New statute prohibits disorderly conduct at funerals.

MCL 750.167d makes it a crime to engage in disorderly conduct within 500 feet of a funeral, memorial service, or viewing of a deceased person.

Conduct prohibited under the new section includes: Making a loud and raucous noise after being asked to stop, making any statement or gesture that would intimidate a reasonable person, and engaging in any other conduct that the person should reasonably know will adversely affect the funeral.

False Report of Child Abduction – MCL 28.754 – add to page 7-11

New statute provides penalties for false report of abducted or missing child.

A person shall not intentionally make a false report of the abduction of a child, or intentionally cause a false report of the abduction of a child to be made, to a peace officer, police agency of this state or of a local unit of government, 9-1-1 operator, or any other governmental employee or contractor or employee if a contractor who is authorized to receive the report, knowing the report is false. A person who violates this subsection is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.

A person shall not intentionally make a false report that a child is missing who suffers from severe mental or physical disability that greatly impairs the child's ability to care for himself or herself, or intentionally cause such a report to be made, to a peace officer, police agency of this state or of a local unit of government, 9-1-1 operator, or any other governmental employee or contractor or employee of a contractor who is authorized to receive the report, knowing the report is false. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

The court may order a person convicted under this section to pay to the state or a local unit of government and the media the costs of responding to the false report or threat.

CHAPTER EIGHT: EVIDENCE

Evidence of Prior Acts – 768.27a – add to page 8-15

Evidence of certain prior offenses against minors may be admissible.

Notwithstanding section 27, in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered.

Evidence of Prior Acts – MCL 768.27b – add to page 8-15

Evidence of prior acts of Domestic Violence may be admissible.

(1) Except as provided in subsection (4), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.

Hearsay, Statements – MCL 768.27c – add to page 8-8

Statements made by victims of domestic violence may be admissible in court without victim present. (Note: this statute appears to be in conflict with cases in which similar statements were ruled inadmissible as violating the Confrontation Clause).

This statute creates an exception to the hearsay rule in domestic violence cases. It applies to trials and evidentiary hearings commenced or in-progress *on or after May 1, 2006*.

Under the new rule, statements made by victims of domestic violence are admissible in court if certain criteria are met.

Criteria for Admissibility

In order to be admissible, the victim's statement must:

1. Be made to a law enforcement officer
2. Describe the infliction or threat of physical injury
3. Be made at or near the time of the infliction or threat of physical injury
4. Be made under circumstances indicating that the statement is trustworthy

Trustworthiness

Factors to be considered in determining trustworthiness include, but are not limited to:

1. Whether the statement was made in contemplation of litigation
2. Whether the victim has a bias or motive for making a false statement
3. The extent of any bias or motive for making a false statement
4. Whether the statement is corroborated by other evidence

Officers investigating domestic violence cases should consider having the victim make a statement in writing when practical. A written statement admitted under this section could then be entered into evidence in the victim's own words rather than the officer's restatement of what the victim told the officer. Officers should also ensure that indicators of trustworthiness are documented in the statement itself or in the supporting police report. This will assist a court deciding admissibility by providing them with a documented picture of the situation at the time the statement was made.

Hearsay, 911 tapes – add to page 8-9

9-1-1 tapes may be admissible evidence. *Davis v. Washington*, 126 S.Ct. 2266 (2006)

FACTS: A victim of domestic violence called 9-1-1 to report the crime. During the call, a radio operator asked specific questions regarding the crime. The victim did not appear to testify at trial, and the state offered the 9-1-1 tapes as evidence.

HELD: The tapes were admissible because the questioning by the radio operator was done to facilitate police assistance at an ongoing emergency. The victim's statements were made because "she was seeking aid, not telling a story about the past."

The Court contrasted this case with a companion case in which the victim was interviewed some time after the assault (police were present and able to protect the victim). In the companion case, the victim's

statements to police were inadmissible hearsay because they were gathered for the purpose of proving the crime, not to meet an ongoing emergency.

CHAPTER NINE: LAWS OF ARREST

LEIN checks of suspects required – add to page 9-7

LEIN checks to determine parole status of suspects required.

The Code of Criminal Procedure has been amended to require that police officers conduct LEIN checks to determine whether a person is on parole when police make an arrest or prior to seeking an arrest warrant. When an arrestee or a person for whom a warrant has been issued is found to be on parole, police must "promptly" notify the Department of Corrections of the following:

- The identity of the person arrested or named in the warrant
- The fact that the LEIN check indicates the person is a parolee
- The charges for which the person was arrested or the charges in the warrant

Notice to the DOC may be accomplished telephonically or electronically to one of the following:

- A parole agent serving in the county where the arrest was made or warrant was issued
- The supervisor of the parole office serving the county of arrest of warrant issuance
- The DOC's 24-hour phone line listed in the LEIN return indicating the person is on parole

In cases where a judge or magistrate issues an arrest warrant for a parolee, but the court delays entry of the warrant into LEIN pending appearance of the parolee, it becomes the responsibility of the court to make the required notification.

Knock and Announce; see *Search and Seizure*.

CHAPTER TEN: ADMISSIONS AND CONFESSIONS

Miranda, effective waiver - add to page 10-14

Police must ensure that a suspect understands his or her Miranda rights in order for a waiver to be effective. *People v. McBride*, 273 Mich. App. 238 (2006)

FACTS: A deaf mute murder suspect was questioned with the aid of a sign language interpreter. Normally, a waiver is effective when made through an interpreter competent in the language of the suspect. The record did not indicate that the defendant's rights were completely explained to her through the interpreter.

HELD: The court affirmed suppression of the suspect's confession because the record did not indicate that she knew what her rights were, and they were not adequately explained to her.

This case reminds us that in order to make sure that a Miranda waiver is effective, police should minimally:

- Completely read each right (don't skip portions).

- Look for and document suspect responses to the advice of rights (logical and appropriate responses).
- Answer requests for clarification.
- Determine a suspect's level of education or other limitations which might indicate an ability to understand.
- When an interpreter is used, ensure that the suspect and interpreter can effectively communicate.
- Ensure that a suspect understands what it means to waive his or her rights. Officers should document their basis for believing that a suspect understands and intelligently waives his or her rights.

The court reiterated the general rule that to be effective, suspect waivers of Miranda rights must be made knowingly and intelligently. As the court put it, a suspect must "understand basically what those rights encompass and minimally what their waiver will entail." A suspect's understanding is measured by the totality of the circumstances surrounding the questioning.

Miranda waiver and written statements – add to page 10-15

Refusal to provide a written statement after an interview does not invoke Miranda. *People v. Williams*, __ Mich. App. __ (2007)++

FACTS: An armed robbery suspect was interviewed after having been advised of his *Miranda* rights. At the end of the interview, he was asked to make a written statement but refused. Several hours later, another investigator re-interviewed the defendant, again after advising him of his rights. The defendant claimed that the second interview (which played a part in his conviction) was improper because his refusal to make a written statement had effectively invoked *Miranda*.

HELD: The "mere refusal to reduce an oral statement to a written statement does not amount to the invocation of the right to remain silent." Choosing one form of communication over another (oral over writing) is not the same as choosing silence over speech.

CHAPTER TWELVE: JUVENILE LAW

Breath Tests; court-ordered random tests on juvenile offenders. See *Weapons and Contraband*.

CHAPTER THIRTEEN: LAWS ON USE OF FORCE

Pursuits – add to page 13-5

When a vehicle pursuit poses a substantial and immediate risk of injury to others, it is reasonable for police to end the pursuit by forcing the suspect vehicle from the road. *Scott v. Harris*, 127 S. Ct. 1769 (2007)

FACTS: An officer attempted to stop a vehicle for speeding and the driver chose to flee. The pursuit was on a two-lane road and at times was at speeds over 90 mph. The driver crossed the center line multiple times, ran red lights, and at one point went though a parking lot and struck a police car. The pursuit ended when the officer rammed the suspect vehicle causing it to leave the road and overturn. The driver was rendered quadriplegic and sued the officer.

HELD: The U. S. Supreme Court analyzed the case under the *Tennessee v. Garner* reasonableness standard and held that the driver's actions posed a risk to innocent bystanders and police officers, and that risk outweighed his Fourth Amendment rights. Put another way: The driver created a substantial risk to others, and it was reasonable for the officer to use force to stop him. This is the rule even when the officer's reasonable actions place a fleeing motorist at risk of serious injury or death.

The Court also held that officers have no obligation to terminate a pursuit in order to protect innocent bystanders from harm caused by a fleeing motorist. The Court reasoned that termination of a pursuit does little to ensure that a fleeing driver will drive more safely, whereas ramming a fleeing vehicle will bring a pursuit to end, ensuring safety for all except the fleeing driver.

While the Court's opinion protects officers from civil suit when they use force to end a pursuit, we offer two warnings. First, Michigan's courts may not hold the same way when faced with the same set of facts. Second, where department policies forbid ramming, officers could face discipline if they ram a vehicle (even when it seems reasonable).

The Self Defense Act – MCL 600.2922b and 600.2922c – add to page 13-6.

General Provisions of the Act

A person may use *deadly force* with no duty to retreat if:

1. They are not engaged in a crime
2. They are in a place they have a legal right to be
3. They honestly and reasonably believe deadly force is necessary
4. The deadly force is used to prevent imminent death, great bodily harm, or sexual assault of the person or another

A person may use force *other than deadly force* if:

1. They are not engaged in a crime
2. They are in a place they have a legal right to be
3. They honestly and reasonably believe force is necessary
4. The force is used to prevent imminent unlawful force against the person or another

Honest and Reasonable Belief

A rebuttable presumption is created in that a person using force has an honest and reasonable belief that imminent death, great bodily harm, or sexual assault will occur if the person using force honestly and reasonably believes the person against whom force is used is any of the following:

1. In the process of breaking and entering a dwelling or business
2. In the process of committing a home invasion
3. Has committed a breaking and entering or home invasion and is still present in the dwelling or business
4. Is attempting to unlawfully remove a person from a dwelling, business, or vehicle against his or her will

The presumption created by the Act does not apply in the following circumstances:

1. The person against whom force was used has a legal right to be in the dwelling, business, or vehicle
2. The person being removed from a dwelling, business, or vehicle is a child in the lawful custody of the person removing the child
3. The person using force is engaged in a crime or using the business, dwelling, or vehicle to further a crime
4. The person against whom force is used is a police officer attempting to enter a dwelling, business, or vehicle in the performance of his or her duties

5. The person against whom force was used has a domestic relationship with the person using force and the person using force has a history of domestic violence as the aggressor

Civil Liability

A person who uses force in accordance with the Act is immune from civil liability for damages caused by the use of such force. Additionally, courts must award attorney fees and costs to an individual who has been sued for using force and the court finds that the force was in accordance with the Act.

Criminal Liability

No crime has been committed when a person uses force as authorized. If a prosecutor believes that the force is not justified, he or she must provide evidence that the force used was not in accordance with the Act. Such evidence must be presented at the time of warrant issuance, preliminary examination, and trial.

Effect on Law Enforcement

The overall effect of the Act on police practice is minimal. Officers should still process suspected crime scenes as in the past. However, because of the duty imposed upon prosecutors, officers should immediately consult with their prosecutor when investigating a case where self-defense has been claimed by the suspect or where the circumstances indicate that such a defense might be used at trial.

CHAPTER FOURTEEN: OWI LAW

Operating, control of vehicle – add to page 14-1

The definition of "operate" in the Michigan Vehicle Code does not require exclusive or complete control of a vehicle. *People v. Yamat*, 475 Mich 49 (2006)

FACTS: Defendant was a passenger in a vehicle driven by his girlfriend, with whom he was arguing. The defendant grabbed the steering wheel, causing the vehicle to veer off the road and strike a jogger. The jogger was severely injured and the defendant was charged with felonious driving. At issue in this case was whether grabbing a steering wheel is "operating" a vehicle under the vehicle code.

HELD: The vehicle code's definition of "operate" neither requires exclusive or complete control of a vehicle. Nor does the vehicle code require "control over all functions necessary to make the vehicle operate." In order to operate a vehicle under the vehicle code, "actual physical control" is required, which the court defined as the "power to guide the vehicle." Under that definition, grabbing a steering wheel is enough to exert the actual physical control required by the vehicle code.

Operating With the Presence of Drugs (OWPD); Metabolized THC – add to page 14-3

Metabolized THC is a schedule 1 controlled substance and its presence in blood may be used to convict a person of OWPD. *People v. Derror*, 475 Mich. 316 (2006)

FACTS: The Court examined two consolidated cases where persons arrested for OWPD were given blood tests within several hours of being arrested, and metabolized THC was found.

HELD: A person with metabolized THC in their body may be prosecuted under MCL 257.625(8). The statute prohibits driving with any amount of a schedule 1 controlled substance in the body.

The Court also held in such cases the prosecutor does not have to prove that the person knew he or she might be intoxicated. The prosecutor only has to prove "that the defendant has any amount of a schedule 1 controlled substance in his or her body."

The Court wasn't concerned with the amount of time lapsed between arrest and the test, and noted that MCL 257.625(8) "does not require intoxication or impairment" and only requires that a driver have "*any amount* of a schedule 1 controlled substance in his or her body" (emphasis added).

OWI is a felony when a person has been convicted of three offenses during their lifetime – add to page 14-4

MCL 257.625(7) makes third offenses of violations listed in MCL 257.625(25) felonies when the person has two or more previous convictions at any time during their life. The previous statute required three within 10 years. The new lifetime time frame also applies to convictions for "child endangerment" under MCL 257.625(7).

Chemical Tests; independent tests – add to page 14-10, remove *People v. Hurn*

Police failure to provide a driver with an independent chemical test does not require dismissal of the case. *People v. Anstey*, 476 Mich. 436 (2006)

FACTS: Defendant was arrested for OWI and asked for independent tests at distant locations. The officer refused, but offered to take the defendant to a closer hospital, which the defendant declined. The county trial court dismissed the case as a result of the officer's refusal to take the defendant to the hospital of his choice.

HELD: Dismissal is not the appropriate remedy when police deny an independent test. However, the Court made it clear that the right to an independent test still exists under MCL 257.625a(6)(d). In fact, the Court crafted a jury instruction for use by trial courts. The instruction (found on page 14 of the opinion) allows the trial judge to inform the jury that a defendant was denied the opportunity for an independent test. The instruction also allows a jury to decide for itself the significance of the denial.

CHAPTER FIFTEEN: LAWS REGARDING DOMESTIC VIOLENCE

Hearsay, exception for statements made by victims of domestic violence – See *Evidence*.

Hearsay, 911 tapes may be admissible evidence – See *Evidence.*

CHAPTER SEVENTEEN: CIVIL LIABILITY

Custody, acknowledgement of parentage – add to page 17-7

Effect of a properly signed acknowledgement of parentage on custody of the minor child.
AG Opinion No. 7191 (March 28, 2006)

After a mother and father sign an acknowledgment of parentage concerning a child born out of wedlock, in accordance with the Acknowledgment of Parentage Act, MCL 722.1001 the mother has custody of that child unless otherwise determined by a court or otherwise agreed upon by the parties, in writing. A police agency may rely on a duly executed acknowledgment of parentage as establishing the mother's custody of the minor child, unless presented with a court order or written agreement signed by the parties stating otherwise.

Hand cuffs on too tight; injury – add to page 17-7

Plaintiff must establish injury to continue suit. *Oliver v. Smith*, 269 Mich. App. 560 (2006)

FACTS: During an arrest, the plaintiff claimed that the officers applied the handcuffs too tightly. He subsequently brought a lawsuit against the officers and the department. The plaintiff failed to produce any documentary evidence of injuries to his wrist. The police officers asked that the lawsuit be dismissed.

HELD: A government employee is not liable for negligence unless his conduct is grossly negligent. Up to this case, there was no Michigan case law that required injuries for this type of claim. Therefore the court did not dismiss the case but did hold that "a police officer's conduct of handcuffing an individual too tightly does not constitute gross negligence unless physical injury results." The plaintiff in this case was thus required to establish injury for his suit to continue.

Civil Stand-by, legality – add to page 17-7

A proper "civil stand-by" does not violate the Fourth Amendment.
Harajli v. Huron Twp., 365 F.3d. 501 (2004)

FACTS: Officers were requested to perform a civil stand-by while a woman removed her belongings from a house. The man the woman had been living with had been physically abusive to her and had threatened her with a gun. The officers stood by while she removed her belongings. Later that day, the plaintiff called police to report that the woman had stolen his property. A lieutenant informed him that the police department would not investigate because, "this was a domestic issue and, another thing; in this country we don't pull guns on women."

HELD: Plaintiff first argued that his Fourth Amendment was violated because they entered his house. The Court held that officers may enter a house if they are given consent by the owner or by one whom they reasonably believe has authority to allow them to enter. In this case there was evidence that the woman did have access to the residence and entered the house by using a garage opener that she had in her possession. Based on these facts it was reasonable for the officers to believe that she had authority to allow the officers to enter.

The plaintiff also sued under equal protection grounds because of the statement by the lieutenant that stated, "in this country we do not pull guns on women." The plaintiff presented no evidence that the police department treated similar situated people differently for a due process violation. For example, there was no evidence presented to indicate that non Arab Americans were treated different then Arab Americans. The due process lawsuit was dismissed.

CHAPTER EIGHTEEN: SEARCH AND SEIZURE

Consent Searches, authority of third parties, apparent authority - add to page 18-32

Determining authority of third parties may require additional investigation.
United States v. Waller, 426 F.3d. 838 (2005)

FACTS: Defendant was arrested pursuant to an arrest warrant outside of the apartment where he stored his belongings. Defendant was transient. He used his friend's apartment primarily for showering, changing clothes, and storing his personal belongings, but did not inform the residents of the apartment of the contents of his bag.

Officers obtained consent to search the apartment from the resident of the apartment and searched for defendant's belongings. Officers located a brown luggage bag in the bedroom closet. The luggage bag was zipped closed. One officer opened the bag, finding two firearms. Officers then inquired of the apartment occupants whether the brown luggage bag or the weapons belonged to any of them. All denied ownership.

HELD: Defendant had a legitimate expectation of privacy in his luggage bag, and thus could constitutionally contest the search of the bag. Defendant had shown by his conduct he sought to preserve the contents of his luggage bag as private. Defendant left the bag zipped, closed, and stored in the bedroom closet of the apartment. The friend did not have *mutual use* of the luggage, nor did he have joint access and control *for most purposes*. Thus, he did not have common authority to grant permission to search defendant's luggage.

Further, the circumstances were sufficiently ambiguous to place a reasonable officer on notice of his obligation to make further inquiry prior to conducting a search of the luggage. The officer's warrantless entry into defendant's luggage without further inquiry was unlawful under the Fourth Amendment. The court held that "to hold that an officer may reasonably find authority to consent solely on the basis of the presence of a suitcase in the home of another would render meaningless the Fourth Amendment's protection of such suitcases."

Consent Searches, computer files – add to page 18-31

Third party authority and apparent authority to consent to search of computer.
United States v. Morgan, 435 F.3d. 660 (2006)

FACTS: A wife called police to report that she thought her husband was using a computer in their house to look at child pornography on the Internet. She informed police that she had installed a program called "SpectroSpy" and had located images during her search. The officers responded and she took them to the basement where she showed them a computer. She indicated that the computer was not password protected and that she did have access to it. She did not mention that the computer she used was upstairs. The officers then had her sign a consent form and during a search at the house they located suspected child pornography. The computer was seized and the husband was eventually charged but argued that the search was invalid because his wife could not give consent to search the computer.

HELD – The Court first looked at whether the wife had apparent authority to allow the officers to search. A search consented to by a third party without actual authority is still valid if the officers reasonably could conclude from the facts available that the third party had authority to consent to the search. In this case the computer was located in a common area and there were not individual names and passwords to access the computer files. The wife also informed the officers that she had installed spy ware on the

computer, which would indicate her ability to access the files. And even if the officer had located the Internet Eraser installed by the husband there was no indication given that the wife could not allow for the consent to search. The court upheld the search by concluding that the wife had apparent authority to allow the search and did not even look at whether the wife had actual authority to search. The search was valid.

Consent Searches, computer files – add to page 18-31

As worded, a "complete" consent search of a car includes anything within the car that could contain something illegal. *People v. Dagwan*, 269 Mich. App. 338 (2005)

FACTS: A registered sex offender entered a state police post to notify them that he was moving out of state. While in the lobby, officers arrested him for a previous sex offender violation. They then asked for permission to search his vehicle, which he granted. He signed a consent form that authorized the troopers to "conduct a complete search of the motor vehicle owned by me and/or under my care, custody, and control including the interior, trunk, engine compartment and all containers therein."

An officer and the suspect went out to his car and he unlocked the doors for them. The officers searched and located a computer which they removed while the suspect stood by. A detective was called who did a cursory search of the computers contents and found child pornography. The computer was then secured and a search warrant was obtained. The subject was subsequently charged for possession of child sexually abusive materials and using a computer to commit a crime. He argued that the search was illegal in that it did not fall under the consent he gave.

HELD – The search was valid. The word "complete" in the dictionary is defined as having all parts or elements, lacking nothing, whole, entire full, thorough, …." The plain language of the consent form authorized a "complete" or total search of anything within the car, including anything within the car that could contain something illegal. Since the computer can store data and may act as a container it was reasonable for the officers to search the files of the computer that was inside the car. The court also emphasized that the defendant never restricted or revoked his consent and was actually by the car when the computer was removed.

Consent Searches, disputed invitations – add to page 18-32

When one occupant gives consent and another refuses to give consent, police may not search for evidence to be used against the refusing party – if the refusing party is physically present. *Georgia v. Randolph*, 126 S.Ct. 1515 (2006)

FACTS: Police were called to the scene of a domestic dispute. During the investigation, the estranged wife of the defendant indicated to police that there was evidence of drug use in the residence. Police asked the wife for consent to search for drugs in a jointly owned residence. The wife gave consent and in fact led officers to suspected drug materials. The defendant unequivocally refused to give consent.

After finding suspected drug evidence, the wife revoked her consent and the police obtained a search warrant and located further evidence of drug use. As a result of the evidence obtained from the consent search and the search warrant, defendant was indicted for possession of cocaine

HELD: A "disputed invitation" to enter a residence cannot overcome the protections guaranteed by the fourth Amendment. As a result, evidence gathered was not admissible against the refusing defendant. The court did not overrule its previous decisions allowing consent to be given by another occupant when the suspect is not present.

Miranda and co-tenant's consent – add to page 18-32

Invoking Miranda rights does not negate a co-tenant's consent to enter the suspect's residence absent an express denial of consent by the suspect . *People v. Lapworth*, 273 Mich. App. 424 (2006)

FACTS: Officers investigating an arson went to the suspect's house and advised him of his Miranda rights before interviewing him. The suspect invoked his rights and the officers arrested him and placed him in a patrol car. One of the officers then asked the suspect's roommate if the officer could enter the house to use the phone, and the roommate agreed. Once inside, the officer observed evidence which he eventually seized pursuant to a search warrant. The suspect essentially claimed that his invocation of his Miranda rights served as a denial of consent to enter the residence.

HELD: The "mere invocation of the right to counsel . . . does not constitute an express objection to a consensual entry into the premises." The Court further noted that where valid consent to enter is obtained from a suspect's cotenant "police are under no obligation to seek out consent from the absent suspect."

The Court did warn that an express objection to entry by the suspect may have rendered the evidence inadmissible. The Court also noted that police may not remove a suspect for "the express purpose of preventing the suspect from having an opportunity to object."

Consent Searches, property of third parties in vehicles – add to page 18-32

Passengers arrested during a traffic stop may challenge the validity of the stop. *Brendlin v. California*, 127 S. Ct. 2400 (2007)

FACTS: Officers conducted a traffic stop without legal justification. During the stop, they recognized the defendant as a parole violator and arrested him. In a subsequent search of the vehicle, the officers found evidence with which they charged the defendant with possession and manufacture of methamphetamine.

The United States Supreme Court held that when police make a traffic stop, all occupants are seized within the meaning of the Fourth Amendment. As a result, a defendant-passenger has standing to challenge the validity of the stop, and evidence found as a result of an unlawful stop may be suppressed, even when the person charged is only a passenger.

Search of passenger belongings – add to page 18-32

A lawful search of a vehicle extends to items in the vehicle owned by passengers. *People v. Labelle*, 478 Mich. 891 (2007)

FACTS: During a traffic stop, a police officer obtained consent to search a vehicle from the driver. The officer did not ask the other occupants of the vehicle for consent to search any containers in the vehicle. Marijuana was found during a search of a backpack located on the passenger-side floor.

HELD: The Michigan Supreme Court has reversed the Court of Appeals. In its order, the Supreme Court held that when police have authority to search the entire passenger compartment of a vehicle, that authority extends to "any unlocked containers located therein, including the backpack in this case."

LEIN license plate checks – add to page 18-9

Checking a license plate in LEIN does not constitute a search into an area protected by the Fourth Amendment. *United States v. Ellison*, 462 F.3d. 557 (2006)

FACTS: A police officer conducted a LEIN check of a license plate on an illegally parked vehicle. The check indicated that the vehicle's owner was wanted. When the vehicle departed, the officer stopped the vehicle and arrested the owner pursuant to the warrant and for firearms violations discovered during a subsequent search.

HELD: Motorists do not have a reasonable expectation of privacy in information contained on a license plate, or in the Secretary of State records accessed through LEIN. The act of conducting a check of a law enforcement database does not constitute the type of search that would implicate the Fourth Amendment. The Court also reiterated the rule that there is no expectation of privacy in a VIN.

Search of abandoned property – add to page 18-24

A person loses their expectation of privacy in abandoned property, even when ownership has not been relinquished. *People v. Henry*, 477 Mich. 1123 (2007)

FACTS: The defendant abandoned a bag by placing it on an electric box near a utility pole when he saw an unmarked police car approaching. The officers inspected the bag and found that it contained illegal recordings.

HELD: The Michigan Supreme Court distinguished Fourth Amendment cases from property law cases. Under property law, a person must unquestionably relinquish ownership to have abandoned property. Under Fourth Amendment analysis a person must simply relinquish his or her interest (not ownership) in property by giving up their reasonable expectation of privacy in the property. In this case, the defendant placed the bag where any passerby could have access to it and he said nothing to assert his privacy interest as officers searched the bag.

Search Warrants, anticipatory – add to page 18-14

Anticipatory search warrants are valid so long as the affidavit establishes probable cause that the evidence will be there when the warrant is executed. *United States v. Grubbs*, 126 S.Ct. 1494 (2006)

FACTS: A postal inspector received a search warrant based upon an affidavit indicating that child pornography would be delivered to the defendant's residence at a future time.

HELD: The use of an anticipatory search warrant is valid as long as the affidavit establishes probable cause that that the triggering event will occur, and probable cause that particular evidence will be found when the triggering event occurs.

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911 hang-ups and traffic stops – add to page 18-38

Without more, 911 hang-ups do not justify a Terry stop. *United States v. Cohen*, 481 F.3d 896 (2007)

FACTS: Officers were dispatched to a residential "911 hang-up." An officer arrived in the area within four minutes and stopped the only vehicle leaving the area of the 911 call. The driver, who initially refused to

identify himself, was subsequently arrested for an outstanding warrant and a suspended license. During a search subsequent to the arrest officers found a pistol in the vehicle.

HELD: The 6th Circuit Court of Appeals upheld suppression of the pistol because a 911 hang-up does not provide the necessary reasonable suspicion to stop a vehicle leaving the area. The court reiterated the *Terry* rule, which only allows an investigatory stop when an officer "has reasonable suspicion supported by articulable facts that criminal activity may be afoot."

The Court likened a 911 hang up to an anonymous tip – it only provides reasonable suspicion when it contains "sufficient indicia of reliability." Here, the officer had nothing more than a 911 hang-up – he had no information that the 911 call indicated criminal activity was afoot, nor was there any known connection between the call and the vehicle stopped.

Inventory of personal property – add to page 18-44

The inventory exception to the search warrant requirement can extend to personal property. *United States v. Tackett*, 486 F.3d 230 (2007)

FACTS: Officers responded to a single-car rollover crash. Prior to arrival of the officers, the driver crawled out of the car and up a hill, dragging with him a computer bag and a backpack. When the driver was taken to a hospital via ambulance he left one of the bags at the scene. Officers inventoried the bag and found silencers and an illegal firearm inside.

HELD: The U.S. 6th Circuit Court of Appeals upheld the inventory search because it was conducted pursuant to "standardized procedures" and the owner never clearly asserted a privacy interest in the contents of the bag.

Most departments have policies requiring the inventory of towed vehicles. However, before conducting an inventory of personal property outside of a vehicle, officers should ensure that their department's policy also requires such inventories.

It is also worth noting that had Tackett asked to take the bag with him, officers would most likely not have been able to inventory it since the policy reasons behind the exception (e.g., prevention of property disputes) would not have been an issue.

Search Warrants, emergency exception – add to page 18-44

Police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. *Brigham City v. Stuart*, 126 S. Ct. 1943 (2006)

FACTS: Police officers responded to a report of a loud party. When they arrived, they heard shouting inside the house and they walked down the driveway to investigate. From the backyard, they were able to see through a screen door and windows and observed four adults trying to restrain a juvenile in the kitchen. The juvenile broke free and punched one of the adults in the face sending him to a sink spitting blood. The officers then entered the home and arrested several persons after the fight ended.

HELD: The United States Supreme Court reaffirmed the use of the emergency exception to the search warrant rule.

Severity of Injury

One of the defendants' claims was that the injury viewed by the officers was not serious enough to justify entry under the emergency exception. The court disagreed, stating that the officers didn't have "to wait until another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering." According to Chief Justice Roberts' opinion, officers are "not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided." Officers may enter a home to stop a fight because police officers are expected to prevent violence and restore order, not simply render first aid after an incident.

Officer Motivation for Entry

Another claim made by the defendants was that the officers actually entered the home for the purpose of making an arrest, not to render aid. Even if this contention were true, the court said it was irrelevant. In analyzing an entry under the emergency exception, the test is not what an officer's *subjective* reasons were, but whether the entry is reasonable if viewed by an *objective* person.

Search Warrants, exigent circumstances – add to page 18-27

Police response to a burglar alarm may justify warrantless entry into a residence. *United States v. Brown*, 449 F.3d. 741 (2006)

FACTS: Police responded to a reported activation of the defendant's home security system. No evidence of forced entry was found, but a basement door was found ajar and it appeared that no one was home. When the officers searched the residence for possible intruders, they found 176 marijuana plants in the basement. The responding officers then secured the scene and obtained a search warrant to seize the marijuana and other evidence.

HELD: The search and seizure was valid under the exigent circumstances exception to the search warrant rule. Specifically, the court found exigent circumstances when police reasonably believed that a burglary was in progress, based on a review of the totality of the circumstances.

The court also noted that such reasonable searches are not limited to a "main area" of a residence. Rather the circumstances justify "the brief and cursory inspection" of the entire premises.

Exigent circumstances may exist in a suspected meth lab. *United States v. Atchley*, 474 F.3d 840 (2007)

FACTS: Officers were dispatched to investigate an anonymous report of a meth lab in a hotel room. After arresting the suspect for assaulting officers, the officers looked into the open door of the hotel room and observed a gun lying on a bed. The officers entered and conducted a protective sweep of the room. After smelling chemicals and seeing glass jars in the room, officers searched the inside of a refrigerator, ice chest, drawer, and ammunition can, finding more evidence. Among the issues addressed by the 6th Circuit Court of Appeals was whether the warrantless search of the hotel room was justified beyond the initial protective sweep.

HELD: The search was justified under the exigent circumstances exception to the search warrant rule because the tip and evidence observed in plain view led the officers to have the objectively reasonable belief that meth was being manufactured in the room. While finding evidence of other drugs would not "validate a warrantless search," the Court held that the dangers associated with making meth and storing related chemicals created exigent circumstances justifying such as search in order to protect officers and the public.

Search Warrants, knock and announce – add to pages 9-16, 18-17

Violating the "knock-and-announce" rule* does not result in suppression of evidence. *Hudson v. Michigan, 126 S.Ct. 2159 (2006)*

FACTS: Police obtained a search warrant for the defendant's residence and executed it by knocking, waiting for less than five seconds, and entering the residence. They found drugs and a gun.

HELD: The exclusionary rule does not apply to knock-and-announce violations. The exclusionary rule is designed to prevent the use of evidence that was only found because of a violation of the Constitution. However, when police have a warrant, they will find the evidence lawfully, even if they didn't follow the knock-and-announce rule. Put another way, the knock-and-announce violation didn't lead to discovery of evidence, the search warrant did.

Officers are reminded that the knock-and-announce rule is still in effect. Although violation of the rule will not result in suppression of evidence found during the search, officers (and their departments) can still be held civilly liable for violations of the rule. Officers could also be subject to discipline if their failure to properly knock-and-announce violates their department policy.

**** Officers are again reminded that the knock and announce rule is still in effect – this case only addresses the proper penalty for violating the rule***

Constructive entry during search – add to Chapter 18

The constructive entry doctrine is not the law in Michigan, and even if it were, knocking on a door and asking someone to exit does not satisfy the doctrine. *People v. Gillam*, __ Mich. __ (2007)++

FACTS: Police developed probable cause to arrest the defendant for drug-related offenses. Instead of obtaining an arrest warrant, the officers went to the defendant's residence to arrest him based upon probable cause. Three officers went to the door, knocked, and when the defendant answered, they asked him to come outside. The defendant initially refused, explaining he was on a tether and not allowed to leave his residence. After the officers repeated their request that he exit, the defendant did so and he was arrested. After the arrest, the defendant asked to go back inside to get shoes and a coat and an officer accompanied him. Once inside, the officer observed evidence in plain view and seized it.

The defendant asked that the evidence be suppressed because the officers "constructively entered" his residence to make the arrest. He claimed that such an entry without a warrant is illegal, and therefore the evidence should be held inadmissible. He also claimed that although the officers didn't *physically* enter his residence, they *constructively* entered through their coercive tactics.

HELD: The general rule is: Police may not enter a residence to make an arrest without a warrant, and if they do, evidence found may be excluded. Under the doctrine of constructive entry (adopted in some jurisdictions), police are considered to have entered a residence when their conduct coerces a person to leave his or her home. In order to invoke the doctrine, the police coercion must involve "overbearing police tactics" such as threats to use force.

The Michigan Supreme Court refused to adopt the constructive entry doctrine as the rule in Michigan. However, the United States 6th Circuit Court of Appeals has adopted the doctrine. As a result, officers should be mindful that if a case ends up in federal court, the doctrine will apply. To avoid implication of the doctrine, officers should obtain a warrant when feasible or ensure their tactics can't be labeled "overbearing" by avoiding the explicit threat of entry or excessive shows of force (i.e., large numbers of visible officers).

MISCELLANEOUS

Police may contract with owners of private roads for the enforcement of the vehicle code on those roads

MCL 257.601a allows cities, townships, and villages to contract with the owners of private roads for the enforcement of the vehicle code. Once such a contract has been executed, police may enforce the vehicle code on those roads once proper signs have been posted (the cost of those signs must be borne by the owner of the road).

Second Hand or Junk Dealers

MCLs 445.401 – 445.408 amends the law governing second hand and junk dealers to allow local licensing and inspection of such dealers. The Act also requires that dealers maintain records of transactions and that those records be available for inspection by local, but not state, law enforcement. The records must include a fingerprint of persons selling scrap to the dealer. Finally, the Act makes it a felony for a dealer to knowingly buy or sell stolen scrap metal. Officers should note that this section does not apply to pawnbrokers, which are separately addressed in the Pawnbrokers Act, MCL 446.201 et seq.

++ Case citations that contain blanks (e.g., __ Mich. App. __) are listed in that manner because the case had not yet to appeared in the official reporter at the time this supplement was published.